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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

In re RIPPLE LABS INC. LITIGATION

) Case No. 4:18-cv-06753-PJH

) CLASS ACTION

This Document Relates To:

ALL ACTIONS.

) VLADI ZAKINOV, DAVID OCONER, AND  
) AVNER GREENWALD'S MEMORANDUM  
) IN RESPONSE TO THE COMPETING  
) MOTION FOR APPOINTMENT OF LEAD  
) PLAINTIFF AND APPROVAL OF LEAD  
) PLAINTIFF'S SELECTION OF COUNSEL

DATE: June 26, 2019  
TIME: 9:00 a.m.  
CTRM: 3, 3<sup>rd</sup> Floor  
JUDGE: Hon. Phyllis J. Hamilton

1 Presently pending before the Court are two motions for appointment as lead plaintiff filed  
 2 pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”). *See* ECF Nos. 36, 45.  
 3 In addition to the motion filed by movants Vladi Zakinov, David Oconer, and Avner Greenwald, a  
 4 motion was filed by Bradley Sostack (“Sostack”). Both movants agree that the PSLRA directs the  
 5 Court to appoint as lead plaintiff the movant “that the court determines to be most capable of  
 6 adequately representing the interests of [the] class members” in this litigation. 15 U.S.C. §77z-  
 7 1(a)(3)(B)(i). Nor is there any dispute that, pursuant to the PSLRA, the presumptively most  
 8 adequate plaintiff is the movant that both: (1) “has the largest financial interest in the relief sought by  
 9 the class”; **and** (2) “otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil  
 10 Procedure.” 15 U.S.C. §77z-1(a)(3)(B)(iii)(I).

11 Based upon a review of the documentation provided by the movants seeking appointment as  
 12 lead plaintiff, it appears that Sostack claims a larger financial interest than Zakinov, Oconer, and  
 13 Greenwald. However, should the Court determine that Sostack is inadequate, incapable of serving as  
 14 lead plaintiff, or otherwise fails to satisfy the requirements of the PSLRA, 15 U.S.C. §77z-1, *et seq.*,  
 15 Zakinov, Oconer, and Greenwald stand ready, willing, and able to serve as lead plaintiff. Indeed, “if  
 16 the presumptive lead plaintiff has selected a ... sole practitioner who appears to lack the staff to  
 17 handle a major class action lawsuit, the district court should inquire how the lawyer proposes to get  
 18 the job done. If no satisfactory answer is forthcoming, the court may consider whether the plaintiff’s  
 19 decision to select that lawyer casts doubt on his ability to handle the responsibilities of lead  
 20 plaintiff.” *See In re Cavanaugh*, 306 F.3d 726, 733 (9th Cir. 2002). And here, movant Sostack has  
 21 selected as his counsel a sole practitioner of the sort discussed in *Cavanaugh*, raising questions about  
 22 how this large, potentially expensive to litigate, class action will be prosecuted. *See* ECF No. 45-1.

23 Moreover, should Sostack be appointed lead plaintiff and later withdraw, fail to present  
 24 himself as class representative or fail to satisfy Fed. R. Civ. P. 23, Zakinov, Oconer, and Greenwald  
 25 respectfully reserve their right to be considered the most adequate plaintiffs and be substituted as  
 26 lead plaintiffs on behalf of the class. *See In re NYSE Specialists Sec. Litig.*, 240 F.R.D. 128, 133  
 27 (S.D.N.Y. 2007) (removing lead plaintiff finding courts have a “continuing ‘duty to monitor whether

lead plaintiffs are capable of adequately protecting the interests of the class members’”) (citation omitted); *Borenstein v. Finova Grp. Inc.*, No. 00-619 PHXSMM, 2000 WL 34524743 (D. Ariz. Aug. 30, 2000). Zakinov, Oconer, and Greenwald timely filed their motion, and as discussed in their motion, they possess a significant financial interest and unquestionably satisfy the typicality and adequacy requirements of Fed. R. Civ. P. 23. *See* ECF No. 36 at 4.

DATED: June 3, 2019

Respectfully submitted,

ROBBINS GELLER RUDMAN  
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s/ BRIAN O. O’MARA  
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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on June 3, 2019, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ BRIAN O. O'MARA

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# Mailing Information for a Case 4:18-cv-06753-PJH Zakinov et al v. Ripple Labs, Inc. et al

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